



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

Call for Expressions of Interest on evolving justice arrangements post-Brexit

9 October 2018

The Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights and Equality Commission is seeking to contract research on evolving justice arrangements post-Brexit.

The deadline for submitting a quotation is 1.00pm on Wednesday 24 October 2018.

Background

The Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights and Equality Commission is mandated under the Belfast (Good Friday) Agreement 1998 to consider human rights issues on the island of Ireland. In March 2018, the Joint Committee produced a policy statement on the United Kingdom's withdrawal from the European Union¹. The statement was informed by an academic discussion paper on Brexit² commissioned by the Joint Committee and published at the same time.

The Joint Committee's March 2018 policy statement recommended that any future cooperative justice arrangements post-Brexit must comply with the UK Government's commitment to the non-diminution of human rights and equality. With this in mind, the Joint Committee wishes to explore in detail what might be the ideal routes to a cooperative justice space after 2021 that fully respects human rights and equality.

Current EU cooperative justice arrangements include the European Arrest Warrant, prisoner repatriation, deportation arrangements, policing and prosecutorial cooperation via the Eurojust agency, and cross-border systems for the exchange and sharing of data and information for criminal justice purposes, such as the Europol Information System (EIS), the European Criminal Records Information System (ECRIS) and the Schengen Information System (SIS II). These arrangements currently significantly strengthen the capacity of both the UK and other EU member states to protect human rights abuses that take place by way of transnational crimes. It is unclear at present how these arrangements will be affected by the UK's withdrawal from the EU.

¹ https://www.ihrec.ie/app/uploads/2018/03/Joint-Committee-IHREC-NIHRC-Brexit-Policy-Statement_March-2018.pdf.

² <https://www.ihrec.ie/app/uploads/2018/03/Discussion-Paper-on-Brexit.pdf>.

The December 2017 Joint Report did not cover post-Brexit cooperative justice arrangements in detail.³ However, the UK had already withdrawn from some aspects of criminal justice cooperation as far back as 2014, as a reaction to a perceived increased oversight role of the Court of Justice of the European Union (CJEU).⁴ In May 2018, the UK proposed a new dedicated Treaty on Justice and Security, in 'A Framework for the UK-EU Security Partnership'.⁵ This document proposes to retain as much as possible of current co-operation on justice, making the case that the UK should be treated differently from other third countries insofar as it has been a member for decades and will have similar standards on exit day. Cooperation in areas of mutual operational benefit is also proposed, via continued participation and ongoing 'multilateral cooperation' in EU agencies and data-driven law enforcement of current tools, including SIS II, ECRIS and PNR. The document also proposes continuing participation in the European Arrest Warrant, European Investigation Order and Prisoner Transfer Framework Decision.

On 18 June 2018, in its slides presented to the European Council working Party on 'Police and judicial cooperation in criminal matters', the EU stated that it was open to the development of a cooperative justice relationship with the United Kingdom as a component of wider future EU-UK partnership and that the EU27 may consider new measures under conditions for third countries.⁶ Chief Negotiator Michel Barnier has stated that, on the issue of security, any future justice relationship between the EU and the UK can cooperate closely on:

- effective exchanges of intelligence and information
- the exchange of DNA, fingerprints, or Passenger Name Records in aviation to better track and identify terrorists and criminals.
- mechanisms for swift and effective extradition, which guarantee procedural rights for suspects.⁷

³ 'Phase 1 Report, *Joint Report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union* (TF50 2017, 19) 8 December 2017.

⁴ See House of Commons European Scrutiny Committee, 'The UK's block opt-out of pre-Lisbon criminal law and policing measures' (2013) HC 683.

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705687/2018-05-0_security_partnership_slides_SI_FINAL.pdf

⁶ https://ec.europa.eu/commission/sites/beta-political/files/slides_on_police_and_judicial_cooperation_in_criminal_matters.pdf

⁷ European Commission, Statement by Michel Barnier at the press conference following his meeting with Dominic Raab, UK Secretary of State for Exiting the EU, 26 July 2018, available http://europa.eu/rapid/press-release_SPEECH-18-4704_en.htm See also Michel Barnier, 'An ambitious partnership with the UK after Brexit', 2 August 2018, available https://ec.europa.eu/commission/news/ambitious-partnership-uk-after-brexit-2018-aug-02_en

Research Brief

The aim of this research is to inform the Joint Committee of the Northern Ireland Human Rights Commission and the Irish Human Rights and Equality Commission as to the potential human rights and equality gaps envisaged with any future cooperative justice arrangements between the UK and other EU member states and make recommendations as to how such gaps might be addressed. It is expected that the research will address the following non-exhaustive list of issues:

- **European Arrest Warrant:** The European Arrest Warrant (EAW) is centred upon the understanding of a high level of confidence between member states in the area of justice. The research will seek to understand how this can be maintained post-Brexit, including what safeguards might be necessary, given that the EAW operates on the understanding that EU member states maintain equivalent protections within domestic criminal justice systems.⁸ The research should consider how possible models of replacement of the European Arrest Warrant might provide for adequate judicial oversight mechanisms, which take account of developing EAW jurisprudence and maintain comparable standards of rights protections, to at least a standard of the arrangements currently in force under the Extradition Act 2003 (UK) and European Arrest Warrant Act 2003 (Ireland). In addition, consideration might be given to the human rights and equality implications of a possible increased reliance upon the Council of Europe extradition arrangements,⁹ by the United Kingdom, in the absence of the EAW.
- **Prisoner Repatriation and Transfer:** Under EU law, cooperative justice arrangements currently provide for an expedited system of prisoner transfer between EU member states,¹⁰ and the UK can also potentially rely upon the Council of Europe Convention on the Transfer of Sentenced Persons,¹¹ yet EU citizens they can rely upon EU free movement law and EU Charter to resist deportation.¹² The research might usefully consider the availability of alternate rights

⁸ See Opinion of Advocate General Tanchev, delivered 28 June 2018 in Case C-216/18 PPU (Celmer case).

⁹ European Convention on Extradition (13 December 1957).

¹⁰ EU Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters [2008] OJ L327/27, Article 1(2).

¹¹ Council of Europe Convention on the Transfer of Sentenced Persons (21 March 1983).

¹² TEU, Articles 63-66 and EU CFR, Article 8 and 45. See E. Berry, 'The deportation of "virtual national" offenders: the impact of the ECHR and EU law' (2009) 23 *Journal of Immigration, Asylum and Nationality Law* 11.

protections post-Brexit, given that the protections afforded by the Human Rights Act 1998 have been weakened by UK legislation.¹³

- **Policing and Prosecutorial Cooperation:** Europol, the Agency for Law Enforcement Cooperation,¹⁴ supports the law enforcement authorities of EU member states in their efforts to tackle serious cross-border crime and, as such, only EU member states are entitled to full membership. As a third country, the UK would not be entitled to full involvement in Europol, and in setting the Agency's priorities.¹⁵ Likewise, the UK's relationship with Eurojust, the Agency tasked with improving cooperation between prosecutorial/investigatory authorities across EU states,¹⁶ would also be affected. The research might usefully examine the human rights and equality implications of non-participation in these agencies in the future as well as the minimum protections necessary to maintain membership.
- **Information and Data Sharing for Criminal Justice Purposes:** Information sharing and data collection mechanisms which the UK may not be able to access post-Brexit include the Europol Information System (EIS); the European Criminal Records Information System (ECRIS); the Prüm Decisions; the Schengen Information System (SIS II); and Passenger Name Records (PNR). The research might usefully examine the potential risks associated with loss of access to such systems in terms of human rights and equality.
- **Cross-Border Justice Arrangements:** The research also might usefully consider how the Joint Agency Task Force, consisting of PSNI officers, An Garda Síochána, Revenue Commissioners and HM Revenue and Customs and operative since 2016,¹⁷ might usefully be supported to sustain collaborative cross-border investigations post Brexit. Of particular relevance here is data and information sharing where the UK is outside the European Union for the purposes of GDPR.

¹³ See Immigration Act 2014, s 19.

¹⁴ EU Council Decision 2009/371/JHA (6 April 2009).

¹⁵ L. Campbell, *Beyond Brexit – Beyond Borders Mutual Assistance in Policing and Investigating Organised Crime* (Durham University Centre for Criminal Law and Criminal Justice, 2017) p. 4.

¹⁶ EU Council Decision 2002/187/JHA (28 February 2002).

¹⁷ Provided for in Northern Ireland Executive, *A Fresh Start: The Stormont Agreement and Implementation Plan* (November 2015) para 3.2.

Specification

The successful contractor will be required:

- to engage with the Joint Committee to clarify the parameters of the project;
- to undertake both desktop research and any potential interviews with key stakeholders which may include civil society organisations, practitioners, service providers, academics or policy makers in this field; and
- to submit an interim report by **Friday 14 December 2018** and, having taken account of Joint Committee comments, a final report by **Wednesday 2 January 2019**. These timeframes are negotiable in consultation with the Commission.

The Northern Ireland Human Rights Commission retains all rights to the intellectual property and will be responsible for future decisions regarding the publication of the report. In all publications, the role of the contractor will be duly acknowledged.

The Director (Legal, Research, Investigations and Advice to Government) will be available to liaise with the successful contractor for the duration of the project, to resolve any queries concerning the research or the Joint Committee's requirements in respect of the final draft.

Application

Interested contractors are invited to:

1. Write a brief letter of motivation, alongside an annex of relevant experience and publications (no than four pages in total), demonstrating:
 - experience of each member of the research team in undertaking research in the field of EU law, human rights or any other areas related to the work under this tender;
 - knowledge and understanding of the key issues relating to any future cooperative justice arrangements after the UK leaves the EU;
 - knowledge of stakeholders in Ireland and the UK who will provide critical insights into these key issues;
 - how they will conduct the research, including how the research team will ensure the research adds value to pre-existing research;
 - how they will ensure value for money; and

- how quality assurance will be guaranteed.

It is expected that interested contractors will provide an outline of the proposed approach to the project, including the methods they will employ for ascertaining and ensuring that the Joint Committee's requirements are met.

2. Quote a fixed price of no more than £13,500 /€15,000 (inclusive of VAT) for writing and presenting a final report detailing a breakdown of how many days will be allocated to specific tasks undertaken by research team members, alongside a daily financial rate for each researcher. The proposals will be assessed for value for money.
3. Provide details of two referees who can comment on their ability to deliver the type of document described in the above specification.
4. The award of the contract will be based on; the applicant's competence to undertake the work, judged from the content of the letter of motivation and previous experience; how effectively the proposal will be delivered in practice; and value for money. The Joint Committee reserves the right not to accept the lowest quotation.

Any questions about the project should be emailed to Lorraine.hamill@nihrc.org who will arrange for a prompt response.

Please email your application to Lorraine.Hamill@nihrc.org by 1.00pm on Wednesday 24 October 2018.

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